

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

DANIEL HOLLIDAY,)	CASE NO. 1:17 CV 1193
)	
Plaintiff,)	JUDGE DAN AARON POLSTER
)	
vs.)	<u>OPINION AND ORDER</u>
)	
CITY OF BAY VILLAGE,)	
)	
Defendant.)	

This case is before the Court on Plaintiff's Motion to Dismiss Without Prejudice. Doc #:

60. Therein, Plaintiff's counsel, Attorney Michael Harvey, states that his client "has decided to retain experts for compensatory damages and for damages calculations in general." *Id.* at 1. Furthermore, it is Plaintiff's "intention to refile this case within ninety (90) days." *Id.* at 1. Bay Village has filed an opposition to Plaintiff's Motion, stating that it does not object to dismissal of this case, but insists that any dismissal be "with prejudice" in light of Plaintiff's repeated failures to provide the damages calculations he now seeks. Doc #: 62.

The Court is well aware, and the record is reflective of, the dilatory service and discovery practices of Plaintiff's counsel in this case. On April 24, 2018, the Court held a Case Management Conference at which time the parties agreed to a litigation schedule. Doc #: 25. All agreed to a discovery cutoff date of August 31, 2018, and a dispositive motion deadline of October 31, 2018. *Id.* at 1. The parties also agreed to refer the case to Magistrate Judge William Baughman for mediation in June 2018. *Id.*

On May 14, 2018, Magistrate Judge Baughman issued an order scheduling the mediation

for June 25, 2018, expressly directing Plaintiff to deliver to the City “a written itemization of damages and a settlement demand with an explanation of why that demand is appropriate” on or before June 4, 2018. Doc #: 26 at 2. Since that time, it appears that Plaintiff has been dilatory in providing a settlement demand with a reasonable damages evaluation for purposes of mediating the case. See Doc #: 52 at 2-5. Accordingly, Plaintiff’s counsel has resorted to filing a motion to bifurcate liability and damages which the Court has denied, and now seeks to dismiss the case without prejudice so that he can conduct the damages discovery he failed to conduct while this case has been pending.

The docket shows that Magistrate Judge Baughman will be holding a mediation teleconference in this case on September 28, 2018. Doc #: 58. The parties have known since April of 2018 that the discovery cutoff is August 31, 2018 and the deadline for filing a dispositive motions is October 31, 2018. Doc #: 25. The Court intends to observe the October 31 deadline for filing dispositive motions unless the case is earlier settled by Magistrate Judge Baughman.

Thus, the Motion for Dismissal Without Prejudice, **Doc #: 60**, is **DENIED**.

IT IS SO ORDERED.

/s/ Dan A. Polster September 21, 2018
Dan Aaron Polster
United States District Judge